IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 692 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BENNETT, COLEMAN & CO LTD & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR. KS NANAVATI with MR.PRABHAV MEHTA for Applicant(s) : 1 - 3.
MR PD BHATE, ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/02/2006

ORAL JUDGMENT

1. Rule. Mr.Pradeep D.Bhate, the learned Additional Public Prosecutor waives service of rule on behalf of respondents.

2. The applicants are before this Court being aggrieved

of a Criminal Case No.9136 of 2004 filed against the present applicants by one Shri D.R.Solanki, Government Labour Officer and Inspector appointed under Contract Labour (Regulation and Abolition) Act, 1970, Ahmedabad in the Court of learned Judicial Magistrate First Class, Court No.6, Ahmedabad dated 09.12.2004.

3. The learned advocate appearing for the applicants invited the attention of the Court to the facts of the case and emphatically submitted that on fateful day, i.e. on 08.11.2004, there took an accident at the construction site. It is submitted by the learned advocate that on the next date, i.e. on 09.11.2004, the complainant visited the site and without considering the facts and circumstances, lodged the complaint under challenge on 09.12.2004. The learned advocate submitted that what is alleged against the present applicants is breach of Rule 74, 73 and 82(2) of the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972 (hereinafter referred to as, 'the Rules'). The learned advocate submitted that Rule 74, 73 and Sub Rule (2) of Rule 82 of the Rules read as under:

> “74. **Register of contractors**.- Every principal employer shall maintain in respect of each registered establishment a register of contractors

in Form XII.

"73. **Entries to be made in the register of wages**.- The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of wages or the Wages-cum-Muster Roll, as the case may be, in the following form: "Certificate that the amount shown in column No..... has been paid to the workman concerned in my presence on..... at....." ."

"82. **Return** – (2) Every principal employer of a registered establishment shall send annually a return in Form XIV (in duplicate) so as to reach the Registering Officer not later than the 15th February following the end of the year to which it relates."

The learned advocate for the applicants submitted that the applicant company has entrusted the work of construction to one M/s.Sharad Construction Private Limited. The learned advocate submitted that Rule 73 of the Rules provides for 'Entries to be made in the Register of wages'. Rule 74 of the Rules provides for 'Register of contractors' and Rule 82(2) provides for ' filing of certain Returns'. The learned advocate submitted that assuming for the sake of argument that the applicant company was required to observe the aforesaid Rules, it was the principal employer who had to observe

the aforesaid Rules. He submitted that in Form No.5, one officer of the applicant company, viz. Mr.Ashok Solanki, holding the post of Senior Manager (Personnel) in the applicant company ought to have been impleaded in the complaint as he is the person mentioned as the 'principal employer'. The learned advocate submitted that the officers stationed at Mumbai were not required to be impleaded as accused by name, more so when there was an officer by name available stationed at Ahmedabad who has signed Form No.5 as 'principal employer'. but certainly the applicants are not required to be impleaded as the accused.

4. The submissions made by the learned advocate do carry weight. The fact that a responsible officer of the rank of Senior Manager (Personnel) is available locally and the authority knew about the same, still the complaint is filed impleading the officers of the company from Mumbai does indicate that some extraneous consideration has weighed with the authority filing complaint. Let it be clarified that this Court has not examined the merits of the matter. The applicant company is directed to furnish the name of the responsible officer who has signed Form No.5 as 'principal employer' in connection with the site of construction, qua which

the present complaint is filed. It goes without saying that it will be open for the 'principal employer' to take all available defence in the proceedings.

5. The present application is partly allowed. The Criminal Case No.9136 of 2004 pending in the Court of learned Judicial Magistrate First Class, Ahmedabad is quashed and set aside, qua applicant Nos.2 and 3 only. The applicant No.1 company shall furnish all necessary details of the 'principal employer' – responsible officer at Ahmedabad within two weeks from the date of receipt of this order to the Court so as to see that the complaint is proceeded further and taken to its logical end in accordance with law. Rule is made absolute to the aforesaid extent only.

(RAVI R.TRIPATHI, J.)

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